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herself and spouse, a divorce merely renders them tenants in common and she has no equitable claim to the whole, *Reed* v. *Reed,* 109 Md. 690. Community property, including a homestead, was divided by divorce in *Speer* v. *Sykes,* 102 Tex. 451. If in the decree the legal interest is not provided for, the divorcees take as tenants in common, *cf. Joerger* v. *Joerger,* 193 Mo. 133. It is discretionary in the trial court to award all the property to the husband, subject to alimony, *Brogna* v. *Brogna,* 67 Wash. 687. The tendency would appear to be general to do away, in the given circumstances, not only with seisin *per tout* but also with the incident of survivorship; although, in those states where a joint tenancy has not yet fallen into disfavor, the severance may not destroy survivorship, *Ames* v. *Norman,* 36 Tenn. (4 Sneed) 683.

EVIDENCE—DYING DECLARATIONS—OPINION RULE.—In the trial on indictment for manslaughter, deceased's wife was permitted to testify for the state that deceased said, the day after the shooting, "I won't be with you much longer. I have got to leave you. Oh, Lord, what a pity for Frank McNeil to shoot a poor boy like I am for nothing! I never done anything to Frank." *Held,* error. *McNeal* v. *State,* (Miss., 1917), 76 So. 625.

An examination of the numerous decisions on dying declarations in criminal cases shows that the application of the Opinion Rule by the courts has resulted in great confusion and conflict. See note, 56 L. R. A. 365; note 21 L. R. A. (N. S.) 840. The Opinion Rule has been declared by Wigmore to have no application to dying declarations "because the Opinion Rule is based on the theory that wherever the witness can state specifically the detailed facts observed by him, the inferences to be drawn from them can equally well be drawn by the jury. But since declarant is here deceased, it is no longer possible to obtain from him by questions any more detailed data than his statement may contain, and hence his inferences are not in this instance superfluous but are indispensable. Nevertheless the courts seem to accept the Opinion Rule as applicable. 2 WIGMORE ON EVIDENCE, 1447, and note; and see note 56 L. R. A. 375. This illogical application of the Opinion Rule has been overcome in some jurisdictions by the application of the fiction that the statement sought to be admitted in evidence is not opinion, but a "collective fact". *State* v. *Fielding,* 135 Ia. 255; *Smith* v. *State,* 133 Ala. 73. On this theory, while not repudiating the Opinion Rule in name, the Supreme Court of Mississippi, previous to this case, showed a tendency to follow the doctrine stated in WIGMORE, (*supra*). The declarations in *Payne* v. *State,* 61 Miss. 161, that "he shot me without any cause whatever;" in *Powers* v. *State,* 74 Miss. 777, "you have killed me without cause;" in *Jackson* v. *State,* 94 Miss. 8', that the accused killed him for nothing; in *House* v. *State,* 94 Miss. 107, 21 L. R. A. (N. S.) 840, that H. had killed him, and killed him without cause, were all admitted. In the last case the court relied on the section of WIGMORE, and note cited, *supra.* Despite the statement of the court in the principal case that it is not overruling the above cases, it is difficult to see how a distinction can be based on anything but a barren quibble over terms. It is a return to the Opinion Rule *in toto.*